

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

IN RE DIGITEK®
PRODUCT LIABILITY LITIGATION

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #48
(Joint Hearing to Address Challenges to Scientific and Technical Evidence)

In the spirit of cooperation and collegiality evident since the inception of this MDL, several distinguished state judicial officers presiding over certain consolidated *Digitek* actions have graciously agreed to conduct, with the undersigned, a joint hearing to address the scientific and technical issues presented in this litigation for resolution pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its federal and state progeny. Those issues are best addressed through coordinated proceedings, albeit with each presiding judicial officer giving separate and individualized attention, and disposition, to the evidence and arguments as they relate to his or her assigned consolidated civil actions.

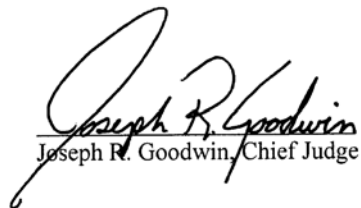
The Honorable Sandra Mazer Moss of Pennsylvania, the Honorable Brian R. Martinotti of New Jersey, the Honorable Alan D. Moats of West Virginia and the Honorable Buddie J. Hahn of Texas will sit jointly with the undersigned and hear evidence on these issues. The coordination of these hearings requires an alteration to the schedule in this MDL. It is hereby **ORDERED** that the hearing previously scheduled for disposition of all dispositive and *Daubert*

motions set for December 10, 2010, under the scheduling deadlines set forth in PTO #16 and amended by PTO #45, is **RESCHEDULED for 9:00 a.m. on October 13 -14, 2010, in Charleston, West Virginia** in the undersigned's Seventh Floor courtroom at the Robert C. Byrd United States Courthouse.

Lead counsel for the parties in the MDL are further **ORDERED** to meet and confer and submit to the court **no later than January 6, 2010**, an agreed proposed revised scheduling order for relevant dates prior to the re-scheduled *Daubert* hearing necessitated by this change. If an agreement cannot be reached by this date the revised dates will be set by the court.

The court **DIRECTS** the Clerk to file a copy of this order in 2-08-md-1968 which shall apply to each member Digitek-related case previously transferred to, removed to, or filed in the is district, which includes counsel in all member cases up to and including civil action number 2-09 -cv-1490. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsc.uscourts.gov.

ENTER: December 18, 2009


Joseph R. Goodwin, Chief Judge